IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.NO.9081 of 2000 and W.P.NO.9082 of 2000
AND
W.P.M.P.NOs.13359,13361,15096 and 15097 of 2000

V.C.Jain. .. Petitioner in W.P.9081/2000
Naresh Kumar. .. Petitioner in W.P.9082/2000

-Vs-

1.The District Registrar,
S.R.O.Virugambakkam,
Chennai 600 092.

2.Inspector General of
Registration, Santhome
High Road, Chennai.600 004... Respondents in both W.Ps.

Writ Petition under Article 226 of the Constitution of
India, praying to issue a writ of Certiorarified mandamus as stated therein.

For Petitioner: .. Mr.Sathish Parasaran

For Respondents: .. Mrs.R.Thenmozhi
Sivaperumal,AGP.

:O R D E R

Petitioners have filed the above writ petitions praying to issue writs of certiorarified mandamus calling for the records comprised in the proceedings of the first respondent dated 2.6.2000 in Nos. 244/97 and 243/97 respectively, quash the same and consequently issue a Mandamus directing the first respondent to forthwith release the pending Document Nos.808/96 and 807/96 respectively after duly completing the process of registration by accepting the deficit stamp duty of Rs.54,484/- by each of the petitioners.

2. In the similar affidavits filed in support of the above writ petitions, the petitioners would submit that they have purchased the pieces of lands comprised in S.No.296 and 297/2 respectively in Krishna Nagar,

Maduravoyal Village, Saidapet Taluk, Chengalpattu District admeasuring 25 cents or 10900 sq.ft. from one Smt.Vivekavathi wife of Kodali Bosubabu; that the market value of the property as per the executant's assessment was declared as Rs.4,54,818/-; that the petitioners thought that they could pay the deficit stamp duty after ascertainment; that the petitioners are ready and willing to pay the deficit stamp duty and get the document released; that the petitioners received the impugned communication dated 2.6.2000, which was passed by the first respondent under Section 40(i)(b) of the Indian Stamp Act besides levying the deficit stamp duty of Rs.54,484/-, a penalty of Rs.5,44 ,840/- each on the instruments thus levying in all a sum of Rs.5,99,3 24/- on the ground that the petitioners had secured unjust enrichment by presenting the document with deficit stamp duty and the impugned order dated 2.6.2000 is liable to be quashed.

3. No counter has been filed on the part of the respondents. But the learned Additional Government Pleader (Writs) appearing on behalf of the respondents would argue on instructions.

4. During arguments the learned counsel appearing on behalf of the petitioners besides giving the history of the case would basically rely on two judgments reported in (i) ORIENT PAPER MILLS LTD., v. UNION OF INDIA (AIR 1969 SC 48) and (ii) ORIENT PAPER MILLS LTD., v. UNION OF INDIA (AIR 1970 SC 1498)

5. In the first judgment cited above, the Hon'ble Apex Court has held:

"Collector while hearing appeal acts quasi judicially and directions issued by Central Board of Revenue cannot be binding on him for purposes of deciding the appeal and the direction of Board could not be binding on the Collector."

6. In the second judgment cited above, a Bench consisting of three Judges of Hon'ble Apex Court has held:

"The assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner. When the assessment is to be made by the Deputy Superintendent or the Assistant Collector, the Collector, to whom an appeal lies against his order of assessment, cannot control or fetter his judgment in the manner of assessment. If the Collector issues directions by which the Deputy Superintendent or the Assistant Collector is bound no room is left for the exercise of his own independent judgment. An appeal then to the Collector becomes an empty formality. The direction given by the Collector being invalid the proceedings before the Deputy Superintendent or the Assistant Collector are vitiated Decision of Central Government reversed.

7. The learned counsel would then cite yet another judgment reported in BOARD OF REVENUE, CHEPAUK, MADRAS NOW ANDHRA AT MADRAS REFERRING OFFICER v.

POOSARLA CHINA APPALANARASIMHULU (AIR 1957 Andhra Pradesh 237) wherein it is held:

"The duty of the Collector under S.40 is a judicial one and the fact that a hierarchy of tribunals is provided for, emphasises that fact. Though S.40 does not in terms say that the opinion of the Collector should be expressed and implemented, after giving notice to parties, the principles of natural justice require that it should be done so."

8. Referring to the levy of penalty which is ten times the value of the property, the learned counsel would cite yet another judgment reported in SMT. KAMALA DEVI v. THE CHIEF CONTROLLING REVENUE AUTHORITY, DELHI (AIR 1966 Punjab 293) wherein a Full Bench of the said High Court has held:

"The executant of a document ought not to be subjected to the maximum penalty, even if the document is found to be under-stamped, unless an attempt has been made to evade the payment of the proper stamp duty by trying to disguise the true nature of the document by drafting it in misleading terms."

9. Pointing out that the value of the transaction is disclosed, the learned counsel would cite yet another judgment reported in BALAKRISHNA BIHARI LAL v. BOARD OF REVENUE M.P. AND OTHERS (AIR 1970 MP 74) wherein a Full Bench of Madhya Pradesh High Court has held:

"The powers of the Collector under Section 40 of the Stamp Act are discretionary in respect of imposition of penalty."

On such arguments the learned counsel would ultimately pray to grant the relief as prayed for.

10. In reply, the learned Additional Government Pleader (Writs) would argue to the effect that the writ petition is not maintainable under Section 56(2) of the Act when the order is passed under Section 40(i)(b) of the Indian Stamp Act; that under Section 56(2) they have got right of appeal and without exhausting the same the petitioners have chosen to come before this Court seeking extraordinary relief; that the Collector has got power under Section 40(i)(b) of the Indian Stamp Act; that the petitioners are neither opting for nor challenging the order legally; that the first notice on 12.8.1997, the second notice on 9.9.1997, the third notice on 16.9.1997 and yet another notice dated 6.4.1998 have been served on the petitioners and only after having afforded with such opportunities final orders have been passed. The learned Additional Government Pleader (writs) would end up concluding that the impugned order had been passed only in accordance with law and hence the above writ petitions would only become liable to be dismissed.

11. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what could be gathered is that the petitioners having purchased two identical lands under document Nos.P.808 and P.807 of 1996 concerned with the above writ

petitions respectively, presented the same before the first respondent District Registrar S.R.O., Virugambakkam, Chennai, for registration and the said authority by orders impugned in the respective writ petitions has determined the amounts recoverable from the petitioners as deficit stamp duty for the release of these pending documents and has arrived at the conclusion to calculate in all a sum of Rs.54,584/- which should have been collected on each of these documents, but they have been written only in stamp papers of each valuing Rs.100/-, deducting the said amount of Rs.100/- relating to each document has not only ordered to pay the remaining sum of Rs.54,484/- being the deficit stamp duty on each instrument, but also has levied a penalty of Rs.5,44,840/- on each instrument being the ten times of the stamp duty payable under Section 40(i)(b) of the Indian Stamp Act, thus requiring the petitioners to pay a total sum of Rs.,99,324/- on each of the instruments mentioned above, testifying the validity of which the petitioners have filed the above writ petitions.

12. Prior to going into the merit of the case, at the outset, it is relevant to decide the legal question raised on the part of the learned Additional Government Pleader (Writs) to the effect that whether it is proper on the part of the petitioners to have jumped to the High court seeking to invoke its extraordinary jurisdiction conferred under Article 226 of the Constitution of India as though the petitioners have either been left without any other statutory remedy or having come after exhausting such remedies made available under law.

13. Though a number of judgments have been cited on the part of the learned counsel for the petitioners to the effect of Section 40 of the Indian Stamp Act, empowering the Collector to levy penalty of ten times if they evaded stamp duty, absolutely no explanation has been offered on the part of the petitioners as to why they have not chosen to seek remedy provided for under Section 56 of the Indian Stamp Act whereunder against the order passed under Section 40(i)(b) of the Act, a revision would lie before the Chief Controlling Revenue Authority especially in view of the position of law; that an order made under Section 40(i)(b) of the Act by the Collector i s only subject to the control of the Chief Controlling Revenue Authority named under Section 56 of the Act.

14. Moreover, it has been made clear that this revisional jurisdiction under this Section is akin to appellate jurisdiction and the revisional authority has also power to grant interim relief of stay as held in AIR 1994 Alahabad, 371.

15. Though, it cannot be said that always one has to exhaust the statutory remedies prior to resorting to the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, still, it could be done in exceptional cases and the rule is still that the litigant is expected

to exhaust all his legal remedies made available under statutes and only thereafter he can seek asylum with the High Court invoking its extraordinary jurisdiction conferred under Article 226 of the Constitution of India.

16. A novel tendency has been developed in the recent times to very easily ward off avenues kept open to ventilate the grievances under the ordinary laws of the land and the said tendency is heinous when it is resorted to without even an explanation offered for skipping such statutory avenues, for getting their grievances reddressed in the forums kept open for remedy under the statutory laws, and the right to deal with the said matters and denial of the opportunity for such authorities or forum is nothing short of circumventing the system and therefore it is always desirable on the part of this Court to make parties realise and adopt the avenues kept open by the ordinary laws of land prior to resorting to the extraordinary jurisdiction of the High Court conferred under Article 226 of the Constitution of India.

17. The cases in hand are no exception to the above proposition and the petitioners without any reasonable explanation offered to have resorted to the extraordinary jurisdiction of the High Court without following the dictum to exhaust the ordinary remedy provided under law and hence this Court is of the firm view that the petitioners must be directed to take recourse to Section 56 of the Indian Stamp Act and hence the following orders:

In result,
(i) both the above writ petitions do not merit consideration and they are dismissed as such.
(ii) The petitioners are directed to file revision petition before the revisional authority designated under Section 56 of the Indian Stamp Act if they so desire.
(iii) Since the time of two years has been lapsed on account of the subject matter having been kept pending before this Court by means of the above writ petitions, it has become necessary on the part of this Court to extend the time for filing such revision before the revisional authority as aforementioned and therefore, the petitioners are hereby permitted to file the revision petition as contemplated under Section 56 of the Indian Stamp Act, if they so desire within four weeks from the date of receipt of a copy of this order;
(iv) The Revisional authority on receipt of such revision, shall dispose the same in the manner known to law;
(v) However, in the circumstances of the case, there shall be no order as to costs.
(vi) Consequently, W.P.M.P.NOs.13359,13361,15096 and 15097 of 2000 are also dismissed.

Index:Yes
Internet:Yes
gr.
To
1.The District Registrar,S.R.O.Virugambakkam,
Chennai-600 092.

2.Inspector General of Registration, Santhome High Road, Chennai.600 004.

V.KANAGARAJ,J